

**BEFORE THE BOARD OF SUPERVISORS OF THE
COUNTY OF AMADOR, STATE OF CALIFORNIA**

IN THE MATTER OF:

RESOLUTION ACCEPTING THE) RESOLUTION NO. 15-003
RABBIT CREEK CAUSEWAY CULVERT)
REPAIR PROJECT - PHASE TWO OPEN)
CUT AS COMPLETE)

WHEREAS, the contractor has completed construction and installation A 60 inch culvert located at North Camanche Parkway at Rabbit Creek near Lake Camanche, California; and

BE IT RESOLVED by the Board of Supervisors of the County of Amador, State of California that said Board does hereby accept the work by K.W. Emerson, Inc. for the construction of Rabbit Creek Causeway Culvert Repair Project (Phase Two Open Cut) as complete; and

BE IT FURTHER RESOLVED by said Board that the Department of Transportation and Public Works Director has found that no liens or Stop Notices are filed and gives the Director authorization to release retention and final payment.

The foregoing resolution was duly passed and adopted by the Board of Supervisors of the County of Amador at a regular meeting thereof, held on the 10th day of February, 2015, by the following vote:

AYES: John Plasse, Louis D. Boitano, Richard Forster and Lynn Morgan

NOES: None

ABSENT: Brian Oneto



John Plasse, Vice Chairman

ATTEST:

JENNIFER BURNS, Clerk of the
Board of Supervisors, Amador County,
California



Deputy

ATTACHMENT A

AGREEMENT AND RELEASE OF CLAIMS

This Agreement and Release of Claims ("Agreement and Release"), made and entered into this _____ day of _____, 2015, by and between the County of Amador ("County"), and K.W. Emerson, Inc. ("Contractor"), whose place of business is 413 West Saint Charles Street, San Andreas, CA, 95249.

RECITALS

A. On **September 9, 2014**, County and Contractor entered into a contract (the "Contract") in the County of Amador, State of California, whereby Contractor agreed to perform certain work (the "Work") consisting of installation of 48-inch culvert beneath Camanche Parkway North between Rabbit Creek and Lake Camanche, including all the necessary components to perform the Work.

B. The Work under the Contract has been completed.

NOW, THEREFOR, it is mutually agreed between County and Contractor as follows:

1. Contractor will not be assessed damages except as detailed below:

Original Contract Sum	\$ <u>683,915.00</u>
Modified Contract Sum	\$ <u>688,216.51</u>
Payment to Date	\$ <u>653,805.47</u>
Damages	\$ <u>0.00</u>
Payment Due Contractor	\$ <u>34,411.04</u>

2. Subject to the provisions of this Agreement and Release, County shall forthwith pay to Contractor the sum of **Thirty Four Thousand Four Hundred Eleven Dollars and Four Cents (\$34,411.04)** under the Contract, less any amounts withheld under the Contract or represented by any Notice to Withhold Funds on file with County as of the date of such payment.

3. Contractor acknowledges and hereby agrees that there are no unresolved or outstanding claims in dispute against County arising from the performance of work under the Contract, except for (i) the Disputed Claims described in Paragraph 4 below, and (ii) continuing obligations described in Paragraph 6 below. It is the intention of the parties in executing this Agreement and Release that this Agreement and Release shall be effective as a full, final and general release of all claims, demands, actions, causes of action, obligations, costs, expenses, damages, losses and liabilities of Contractor against County, all its respective agents, employees, inspectors, assignees and transferees except for the Disputed Claims set forth in Paragraph 4 below and continuing obligations described in Paragraph 6 below.

4. The following claims are disputed (hereinafter, the "Disputed Claims") and are specifically excluded from the operation of this Agreement and Release:

<u>Claim No.</u>	<u>Date Submitted</u>	<u>Description of Claim</u>	<u>Amount of Claim</u>
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[Insert information, including attachments if necessary]

5. Consistent with California Public Contract Code section 7100, Contractor hereby agrees that, in consideration of the payment set forth in Paragraph 2, above, Contractor hereby releases and forever discharges County, all its agents, employees, inspectors, assignees and transferees from any and all liability, claims, demands,

actions or causes of action of whatever kind or nature arising out of or in any way concerned with the work under the Contract, except for the Disputed Claims.

6. Guarantees and warranties for the Work, and any other continuing obligation of Contractor, shall remain in full force and effect as specified in the Contract Documents.

7. Contractor shall immediately defend, indemnify and hold harmless County, all its respective agents, employees, inspectors, assignees and transferees from any and all claims, demands, actions, causes of action, obligations, costs, expenses, damages, losses and liabilities that may be asserted against them by any of Contractor's suppliers and/or Subcontractors of any tier and/or any suppliers to them for any and all labor, materials, supplies and equipment used, or contemplated to be used in the performance of the Contract, except for the Disputed Claims.

8. Contractor hereby waives the provisions of California Civil Code Section 1542, which provides as follows:


A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his settlement with the debtor.

9. The provisions of this Agreement and Release are contractual in nature and not mere recitals and shall be considered independent and severable, and if any such provision or any part thereof shall be at any time held invalid in whole or in part under any federal, state, county, municipal or other law, ruling or regulations, then such provision, or part thereof shall remain in force and effect only to the extent permitted by law, and the remaining provisions of this Agreement and Release shall also remain in full force and effect, and shall be enforceable.


10. All rights of County shall survive completion of the Work or termination of Contract, and execution of this Release.

***** CAUTION: THIS IS A RELEASE - READ BEFORE EXECUTING *****

COUNTY OF AMADOR:

By: 
Vice Chairman, Board of Supervisors
John Plasse

CONTRACTOR:

By: 
Principal

Name (please print): RUSTI EMERSON

Title: PRESIDENT